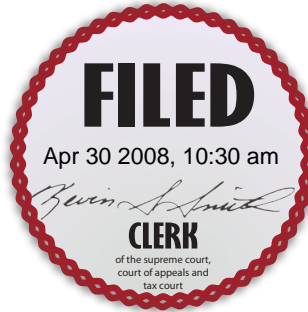


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CANDICE LLOYD,

Appellant-Respondent,

vs.

TERRY LLOYD,

Appellee-Petitioner.

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No. 64A05-0706-CV-311

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable William E. Alexa, Judge
The Honorable Katherine R. Forbes, Magistrate
Cause No. 64D02-0510-DR-9031

April 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Candice Lloyd appeals from the trial court's order dissolving the marriage between her and Terry Lloyd, dividing their marital property, and denying her request for attorney's fees. Candice raises three issues, which we restate as: 1) whether the trial court abused its discretion in awarding Terry more than half of the marital estate; 2) whether the trial court's valuation of Terry's pension is clearly erroneous; and 3) whether the trial court abused its discretion in denying Candice's request for attorney's fees. Concluding that the trial court's finding regarding the value of Terry's pension is clearly erroneous, we reverse and remand. However, we affirm the trial court in all other respects.

Facts and Procedural History

Terry and Candice married on March 6, 1999. Prior to their marriage, the couple lived together for approximately ten months. During the cohabitation and marriage, they lived in a farmhouse owned by Ted and Josie Nehmelman. Terry had lived in this farmhouse since 1973 and, in lieu of paying rent, provided various services such as taking care of farm animals and making repairs to the farmhouse. At some point, Terry was named a beneficiary in the Nehmelmans' revocable trusts and stood to inherit the farmhouse. However, after the litigation surrounding this divorce commenced, the Nehmelmans altered their estate plans so that Terry was no longer a beneficiary.¹

Terry began working at U.S. Steel in 1969. He remained employed there until November 29, 2003, slightly more than four and one-half years into the marriage, when he

¹ The Nehmelmans' attorney sent Candice's attorney a letter explaining that the Nehmelmans, "who are senior citizens, becoming embroiled in this situation through no fault of their own has caused them to become extremely distraught and upset. This has resulted in changes to their estate plan so that Mr. Lloyd is

elected to take an early retirement. As part of this election, Terry received a \$40,000 early retirement incentive, a \$10,000 pension supplement, and a \$400 per month supplement to his regular pension until he reaches age sixty-two, when he becomes eligible for social security benefits. Terry currently receives \$2,619.47 per month before deductions for health insurance and taxes. Candice was employed by Land Shark Foods and was making minimum wage when she and Terry began dating. She quit this job when she moved in with Terry and has not been employed since.

During the marriage, Candice's brother passed away and left Candice a parcel of real estate, which the couple fixed up and sold for roughly \$61,000. Candice also received \$10,000 under her brother's life insurance policy. Candice gave approximately \$12,000 of this inheritance to her children, put roughly \$15,000 in an investment account, and used the rest for improving the farmhouse and to meet other costs incurred by her and Terry. Other than this inheritance, Candice made no financial contributions to the couple's expenses. Both parties made non-economic contributions such as performing housework, maintaining the lawn, and renovating the farmhouse. The trial court found that Terry and Candice "made substantially equal non-economic contributions to the acquisition of property." Appellant's App. at 17.

On October 18, 2005, Terry filed a Petition for Dissolution of Marriage. On January 25, 2006, the trial court issued a provisional order requiring Candice to vacate the farmhouse and Terry to pay Candice's health care insurance and expenses, vehicle expenses, plus \$650 per month in provisional maintenance. Over the next several months, Candice filed various

no longer a beneficiary." Appellant's Appendix at 136.

discovery motions relating to Terry's interest in the farmhouse. Among other things, Candice served subpoenas on the Nehmelms ordering them to produce documents related to their estate plan. The Nehmelms filed a motion to quash the subpoenas, but subsequently withdrew this motion concurrently with Candice's withdrawal of the subpoenas. After mediation failed, Candice filed a motion for findings of fact and conclusions of law. On September 25, 2006, and November 13, 2006, the trial court held a hearing. On January 2, 2007, the trial court issued its judgment along with findings of fact and conclusions of law. Among other things, the trial court found:

23. The Court further finds that Husband's economic circumstances at the time the disposition of property is to become effective are only slightly better than Wife's. Husband has no employment, he cannot return to his previous employment, and he relies solely on his pension benefits for income. Further, Husband has no certainty as to his future living arrangements or expenses whereas Wife has and can continue to reside with her family at little or no cost while she pursues finding employment.

24. For the above reasons, the Court finds that an unequal division of the marital estate is just and reasonable in this case and sets aside to Husband the pre-marital portion of his retirement accounts, his pension and 401(k) account, and divides and distributes the coverture value of the marital estate [equally between the parties].

Appellant's App. at 25. The trial court went on to deny Candice's request for attorney's fees, finding:

E. Each party shall be responsible for their [sic] individual attorney fees and litigation expenses.

29. Despite ample evidence and case law to the contrary, Wife has pursued her frivolous, unreasonable, and baseless claim that the farmhouse owned by the Nehmelms is a marital asset and its value should be included in the marital estate.

32. As a result of Wife's actions, Husband has been forced to research and respond to numerous written discovery responses, participate in discovery

disputes involving the Nehmelman's [sic] and their attorney, and participate in extended depositions.

33. The parties have been unable to engage in any meaningful settlement discussions because of Wife's frivolous legal position.

34. As a result of Wife's actions, Husband has incurred substantial and unnecessary attorney fees and litigation expenses

Id. at 26-27.

On February 1, 2007, Candice filed her Motion to Correct Errors, alleging the trial court erred in: 1) failing to address the method by which Terry would transfer to Candice her portion of his pension; 2) including Candice's inheritance in the marital pot; 3) excluding the cohabitation period when valuing Terry's pension; 4) valuing the parties' economic circumstances; 5) assessing the parties' earning capacity; 6) finding that Terry did not dissipate assets; 7) evaluating the parties' contributions during the marriage; 8) declining to award Candice attorney's fees; and 9) dividing the marital estate. On April 5, 2007, the trial court held a hearing on Candice's motion and subsequently entered an order denying Candice's motion in all aspects except that the trial court acknowledged that it failed to address the method by which Candice was to receive her portion of Terry's pension. Candice now appeals.

Discussion and Decision²

I. Division of Marital Estate

A. Standard of Review

² On February 6, 2008, Candice filed a Notice of Additional Authority, seeking to add a quotation from Grathwhol v. Garrity, 871 N.E.2d 297 (Ind. Ct. App. 2007). On February 20, 2008, Terry filed a motion to strike this additional authority, arguing that Candice did not file her notice until more than six months after Grathwhol was published and more than three months after she filed her appellate brief. The authority cited by Candice had no bearing on our decision. Therefore, although we recognize that Appellate Rule 48 requires a party to "promptly" file notices of additional authority, we decline to strike Candice's additional authority

“When a party challenges the trial court’s division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal.” In re Marriage of Bartley, 712 N.E.2d 537, 542 (Ind. Ct. App. 1999). We view the trial court’s disposition of property in its entirety, and not item by item. Fobar v. Vonderahe, 771 N.E.2d 57, 59 (Ind. 2002). We do so recognizing that the trial court “may allocate some items of property or debt to one spouse because of its disposition of other items.” Id. at 60. Were we to view items “in isolation and apart from the total mix, it may upset the balance ultimately struck by the trial court.” Id.

In this case, at Candice’s request, the trial court entered findings of fact and conclusions of law. Under these circumstances, we employ a two-tiered standard of review. First, we determine whether the evidence supports the trial court’s findings of fact. Bertholet v. Bertholet, 725 N.E.2d 487, 495 (Ind. Ct. App. 2000). Second, we determine whether the findings of fact support the judgment. Id. We will set aside a finding or the judgment only if it is clearly erroneous. Id. “A finding is clearly erroneous when there is no evidence or inferences reasonably drawn therefrom to support it.” Id. “The judgment is clearly erroneous when it is unsupported by the findings of fact and conclusions entered on the findings.” Id. When determining whether a finding or the judgment is clearly erroneous, we will neither reweigh the evidence nor judge witnesses’ credibility and will consider the evidence and the reasonable inferences that can be drawn therefrom supporting the judgment. Scott v. Scott, 668 N.E.2d 691, 695 (Ind. Ct. App. 1996). We will affirm the trial court’s

and hereby deny Terry’s motion.

judgment “unless the evidence points incontrovertibly to an opposite conclusion.” Id.

B. Distribution of the Estate

The division of property pursuant to a dissolution of marriage is governed in part by Indiana Code section 31-15-7-4, which provides:

- (a) In an action for dissolution of marriage . . . the court shall divide the property of the parties, whether:
 - (1) owned by either spouse before the marriage;
 - (2) acquired by either spouse in his or her own right:
 - (A) after the marriage; and
 - (B) before final separation of the parties; or
 - (3) acquired by their joint efforts.

Under this “one pot” theory of distribution, the trial court must consider, divide, and award all the parties’ assets except for those acquired by a party after the final separation date.

Balicki v. Balicki, 837 N.E.2d 532, 539-40 (Ind. Ct. App. 2005), trans. denied.

There is a presumption that the marital property will be divided equally between the two parties. Ind. Code § 31-15-7-5.

However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
 - (A) a final division of property; and

(B) a final determination of the property rights of the parties.

Id. A finding relating to one of the factors does not require the trial court to deviate from the presumption of equal distribution; instead, “[w]hether to do so is a matter of trial court discretion in light of all other relevant factors.” Fobar, 771 N.E.2d at 59.

Here, the trial court awarded Terry the value of his pension acquired prior to the marriage, and divided the remaining marital estate equally between the parties.³ Our review of the trial court’s decision will now turn to an analysis of the five statutory factors.

1. Contribution of the Parties to the Acquisition of Property

Candice takes exception to the trial court’s finding that the parties made equal non-economic contributions to the acquisition of property, and points to the evidence indicating that she performed various tasks such as cooking, cleaning, chopping firewood, canning and freezing food, and maintaining the lawn. However, evidence also indicates that Terry performed substantial work such as cooking, maintaining the yard and exterior of the farmhouse, and butchering animals for food. We are not in a position to reweigh these contributions on appeal, and conclude that the evidence supports the trial court’s finding that the parties made equal non-economic contributions.

It is clear that Terry made more economic contributions to the acquisition of property than did Candice. The evidence indicates that Candice contributed roughly \$60,000 of her inheritance to the marital pot. This contribution was the only economic contribution made by

³ We emphasize that the pre-marriage value of Terry’s pension was a marital asset and was therefore included in the marital pot. See Scott, 668 N.E.2d at 708 (recognizing that where the trial court awarded the wife an inheritance received during the marriage, and divided the “remainder” of the marital properly equally, “[t]he use of the term ‘remainder’ demonstrates that the trial court considered the inheritance a marital asset and that it set that asset over to one party,” and that “[t]his action is within the trial court’s discretion”).

Candice. Further, the trial court found that Terry “made substantial labor and capital contributions to prepare the residence [inherited by Candice] for sale.” Appellant’s App. at 18. Meanwhile, Terry contributed his paychecks and pension payments, which were used to pay the parties’ monthly expenses. Therefore, based on the trial court’s findings, the parties made equal non-economic contributions and Terry made more economic contributions.⁴

2. Property Acquired Before the Marriage or by Inheritance or Gift

As discussed above, Candice acquired roughly \$60,000 pursuant to her inheritance from her brother. Both parties’ pension evaluations placed the value of Terry’s pension acquired before the marriage at over \$300,000. Additionally, Terry’s 401(k) account was worth over \$40,000 at the time of the marriage. This factor clearly weighs in favor of Terry.

3. The Parties’ Economic Circumstances

The trial court found that Terry’s economic circumstances are “only slightly better” than Candice’s. Appellant’s App. at 25. Candice points out that she has no pension, argues that she is in poor health, and claims she is not qualified for social security retirement or disability. However, as the trial court found, “[a]lthough Wife now testifies to some medical problems, [none] of them are disabling and she is capable of working.” Id. at 16. The trial court further found that Candice had not sought employment immediately after the separation because “she believes that she needs a break and is ‘on an R & R.’” Id. at 16-17.

Although Terry did reside in the farmhouse at no cost at the time of the dissolution, as he is not a beneficiary in the Nehmelms’ trusts, the duration of his ability to reside there without paying rent is uncertain. Further, Candice was residing with her daughter at minimal

⁴ We emphasize that non-equal economic contributions to a marriage do not compel a deviation from

cost.⁵ Again, without reweighing the evidence or judging witness credibility, we cannot say that the trial court's finding that Terry's economic position was only slightly better than Candice's is clearly erroneous. See Scott, 668 N.E.2d at 707 (recognizing that this court will not reweigh the evidence and "must consider the evidence most favorable to the trial court's distribution").

4. Dissipation of Assets

Throughout these proceedings, Candice has alleged that Terry hid money throughout the farmhouse, and has therefore dissipated marital property. The trial court found Candice's testimony regarding this allegation "not credible." Appellant's App. at 5 (finding of fact 37); see also id. at 20 (finding of fact 48) (describing Candice's claims that Terry hid money as "unfounded allegations regarding dissipation of assets"). It was in the province of the trial court to reject Candice's allegations. See Tebbe v. Tebbe, 815 N.E.2d 180, 185 (Ind. Ct. App. 2004) (recognizing that the "trial court was free to accept or reject [the wife's] testimony in whole or in part"), trans. denied. Terry testified that when he received his paycheck or pension, he would deposit some in the bank and cash enough to cover bills and expenses, and place this cash in the barn. Terry testified at the hearing that he did not hide money in the manner described by Candice, see tr. at 140-42, and Terry's son, Tim, testified that he had never seen his father hide money in that manner, see id. at 27-28. Given our

the presumption of an equal distribution.

⁵ In her appellate brief, Candice claims that she pays "\$220.00/month to help with expenses." Appellant's Br. at 38. The trial court found that she was residing "at little or no cost." Appellant's App. at 25. At the hearing, Candice testified that she "tr[ies] to give her [daughter] \$200 a month." Tr. at 292. However, she also testified that in June of 2006, she paid only \$100 in rent, and that "if there was a month that I held money back, it was because I knew that I was going to have to have money for something else, a lawyer fee or something, and if I didn't – if I didn't pay the rent, then that's what the money was held back

standard of review, we must accept the trial court's judgment as to Candice's credibility on this point, and conclude that sufficient evidence supports the trial court's finding that Terry did not dissipate marital property by hiding substantial sums of cash around the farmhouse.

5. The Parties' Earnings or Earning Ability

At the time of the hearing, Terry was receiving just over \$2,000 per month pursuant to his pension. Under his retirement agreement, he is unable to return to his position at U.S. Steel.⁶ Candice had no source of income except for the payments made by Terry pursuant to the provisional order. However, as discussed above, the trial court found that although Candice is not employed, she is capable of working. See Appellant's App. at 16 (finding of fact 16) ("Wife has no current source of income and she made very little or no attempts to find employment during the entire provisional period which lasted more than one (1) year."). Still, it appears that this factor weighs somewhat in favor of Candice.

6. The Trial Court's Disposition

In sum, we conclude the trial court did not abuse its discretion in awarding Terry a substantially larger portion of the marital pot. The trial court found that the parties made equal non-economic contributions to the marriage, while Terry brought the majority of the assets into the marriage and made more economic contributions to the acquisition of marital property. See Beard v. Beard, 758 N.E.2d 1019, 1026 (Ind. Ct. App. 2001) (holding that the trial court did not abuse its discretion in awarding 63% of the marital estate to the husband

for." Id. at 65. She also clarified that she did not contribute to the cost of utilities.

⁶ Candice argues that the trial court's finding that Terry cannot return to his employment is clearly erroneous, as the record indicates that at some point after he retired, Terry worked as a consultant for U.S. Steel for a period of roughly eleven weeks. However, Terry testified that he could not return to work for U.S. Steel, and the trial court's finding on this point is not clearly erroneous. The fact that Terry returned at one

where he owned property worth over four times that owned by the wife prior to the marriage), trans. denied. Although Candice is worse off economically than Terry at the time the marriage was dissolved, she was also worse off economically when the marriage commenced. See Newby v. Newby, 734 N.E.2d 663, 669 (Ind. Ct. App. 2000) (“Wife was admittedly at a severe disadvantage as to her economic circumstances at the time of the dissolution; however, the disparity in this regard also existed at the outset of the marriage.”). Indeed, Candice is leaving the marriage with roughly \$74,000, and appears to be better off financially than at the commencement of the marriage. We recognize that the evidence could also have supported a much smaller award to Terry. However, we also recognize that “[e]ven where the circumstances would support a different award, we do not substitute our judgment for that of the trial court.” Nowels v. Nowels, 836 N.E.2d 481, 485 (Ind. Ct. App. 2005). Given the wide discretion afforded to the trial court, we cannot say that the division of assets fashioned by the trial court is clearly erroneous.

II. Valuation of Pension

A. Standard of Review

“The trial court has broad discretion in ascertaining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion.” Hiser v. Hiser, 692 N.E.2d 925, 927 (Ind. Ct. App. 1998). We will conclude the trial court acted within its discretion if sufficient evidence, and the reasonable inferences made therefrom, support the trial court’s decision. Id. We will not reverse the trial court unless its valuation “is clearly against the logic and effect of the facts and circumstances before it.” Id.

time as a consultant does not inherently mean that he may do so again or as he desires.

“Even where the circumstances would support a different award, we do not substitute our judgment for that of the trial court.” Nowels, 836 N.E.2d at 485.

B. Period of Cohabitation

Initially, Candice seems to argue that the trial court was required to include the period of pre-marital cohabitation in determining the value of Terry’s pension that accrued during the marriage. However, Indiana courts have consistently indicated that a trial court may, but is not required to, consider periods during which couples cohabit prior to their marriage when distributing the marital estate. See Hendricks v. Hendricks, 784 N.E.2d 1024, 1027 (Ind. Ct. App. 2003) (holding the trial court did not abuse its discretion by considering wife’s contributions during cohabitation); Bertholet, 725 N.E.2d at 495 (“[A] trial court may consider periods of cohabitation followed by marriage in determining a proper distribution of the marital estate.” (quoting Larkins v. Larkins, 685 N.E.2d 88, 91 (Ind. Ct. App. 1997)) (emphasis added)); Chestnut v. Chestnut, 499 N.E.2d 783, 787 (Ind. Ct. App. 1986) (“We therefore hold that the trial court could have considered [the wife’s] contributions during premarital cohabitation when it distributed the property upon dissolution.” (emphasis added)).

Here, the trial court decided to exclude the cohabitation period from its determination of the coverture value of Terry’s pension. In reaching this decision, the trial court found that “during the period of cohabitation, Wife was not employed, did not contribute financially to the payment of household expenses and bills including those caused by her family living at the residence, did not have child rearing responsibilities and performed only limited homemaking tasks.” Appellant’s App. at 21-22. Given the discretion we grant trial courts in

this area, we cannot say that the trial court improperly declined to include the relatively brief cohabitation period in its evaluation of the value of Terry's pension.

B. Coverture Value of the Pension

The trial court found that “[t]he present value of [Terry’s] pension, both his regular pension and temporary pension addition, acquired during coverture as of the date of filing the Petition for Dissolution is \$48,331.85.” Appellant’s App. at 20. Candice argues that this finding is clearly erroneous, as the figure of \$48,331.85 is based off of an exhibit submitted by Terry (“Terry’s Pension Evaluation”), which indicates Terry’s annual pension is \$26,633.64. However, all the evidence in the record indicates that Terry’s current annual pension is \$31,433.64. See Petitioner’s Ex 4 (Terry’s 1040A for 2005 indicating he received \$31,434 in pensions and annuities); Petitioner’s Ex 6 (letter from U.S. Steel indicating that Terry’s net monthly pension is \$2,619.47). The figure used in Terry’s Pension Evaluation is the amount of his pension without the \$400 per month supplement,⁷ which the trial court specifically indicated it was including in the marital pot. Terry does not seem to contest the inaccuracy of his Pension Evaluation, but argues only that Candice waived the issue and that the error is de minimus. Because the trial court’s finding is based on erroneous information, we agree with Candice that the evidence does not support this finding by the trial court.

In regard to Terry’s waiver argument, Candice did not waive this issue by failing to raise it in her motion to correct errors. See Ind. Trial Rule 59(A) (only two issues, newly discovered evidence and excessive jury verdict, must be raised in a motion to correct errors), (D) (other issues “appropriately preserved during trial may be initially addressed in the

appellate brief”); Marsh v. Dixon, 707 N.E.2d 998, 1001 (Ind. Ct. App. 1999) (“[A] party does not waive its right to appeal a trial court’s decision if it fails to raise an issue in its Motion to Correct Errors which was properly preserved at trial.”), trans. denied. Further, she did not waive the issue by stipulating to the admission of Terry’s pension evaluation. See Wolfe v. Eagle Ridge Holding Co., LLC, 869 N.E.2d 521, 528 n.5 (Ind. Ct. App. 2007) (holding a party did not waive its argument regarding the propriety of a damages award by not objecting to the admission of an exhibit); Matter of Snyder, 418 N.E.2d 1171, 1178 (Ind. Ct. App. 1981) (party did not waive argument regarding invalidity of written consents by failing to object to the admissibility of the written consents). Finally, we conclude she preserved the issue at trial by submitting her own pension analysis (“Candice’s Pension Analysis”) that included the \$400 per month supplement in the yearly pension amount, submitting proposed findings of fact indicating that Terry’s annual pension was \$31,434, and arguing that Terry’s Pension Evaluation should not be adopted because it did not include the period of cohabitation in the coverture amount. Cf. Mitchell v. Mitchell, 785 N.E.2d 1194, 1199 n.2 (Ind. Ct. App. 2003) (holding wife did not waive argument regarding reasonableness of contempt order because she submitted her own proposed order and argued against husband’s proposed order); Inland Steel Co. v. State Bd. of Tax Comm’rs, 739 N.E.2d 201, 220 (Ind. Tax. 2000) (holding party did not waive argument that the State Tax Board used an improper inflation rate because the party testified at trial and identified an inflation rate that was lower than the rate used by the Board in its trial exhibit), review denied.

⁷ \$31,433.64 - \$26,633.64 = \$4,800 (or 12 months x \$400).

Under these circumstances, we conclude that remand to the trial court is the proper remedy. We do not feel at liberty to adopt a value of Terry's pension, as the parties submitted pension evaluations containing fundamentally different figures and assumptions. For example, Terry's Pension Evaluation identifies the "Date Pension Begins" as "7/1/2013," Petitioner's Exhibit 6, while Candice's Pension Evaluation identifies this date as "8/1/2006," Respondent's Exhibit 11. Further, Terry's Pension Evaluation indicates that his life expectancy is 18.8 years beyond the date of retirement, while Candice's Pension Evaluation indicates that his life expectancy is 24.3 years beyond this date. Finally, Terry's Pension Evaluation uses a 5.391 percent interest rate, while Candice's Pension Evaluation uses a 5.144 percent rate. We remand to the trial court with instructions to determine the coverture value of Terry's pension and in turn adjust the amount awarded to Candice as needed. We recognize that this value may not be subject to precise determination based on the evaluations submitted by the parties.⁸ However, we point out that precision is not necessary and recognize that the trial court will be within its discretion if it assigns any value within the submitted evidence.⁹

III. Attorney's Fees

A trial court "periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceedings under this article [on Dissolution

⁸ Similarly, as we are not able to ascertain precisely the coverture value of Terry's pension, we decline to conclude that any error is de minimus.

⁹ We recognize that the value assigned by the trial court is technically within the range of the evidence submitted by the parties. However, the trial court made a specific finding that it was including that \$400 monthly supplement in its valuation, and, as discussed above, the figure used by the trial court did not contemplate this supplement. Therefore, the amount actually awarded by the trial court is inconsistent with

of Marriage and Legal Separation] and for attorney’s fees” Ind. Code § 31-15-10-1. In deciding whether to award attorney’s fees, the trial court must consider “the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and to earn adequate income, and such factors that bear on the reasonableness of the award.” Thompson v. Thompson, 696 N.E.2d 80, 84 (Ind. Ct. App. 1998). We afford trial courts broad discretion in deciding whether an award of attorney’s fees is warranted. See Russell v. Russell, 693 N.E.2d 980, 984 (Ind. Ct. App. 1998), trans. denied. We will reverse a trial court’s decision regarding attorney’s fees only when we determine that it has abused this discretion. Stratton v. Stratton, 834 N.E.2d 1146, 1152 (Ind. Ct. App. 2005).

Candice argues that her “economic circumstances are dramatically worse than Terry’s.” Appellant’s Br. at 48. Regardless of the validity of this assessment, “a trial court is not required to award fees based on disparity of income alone.” Russell, 693 N.E.2d at 984.

The trial court’s findings indicate that Candice’s allegations regarding the farmhouse and Terry’s dissipation of assets were unfounded and caused Terry “considerable and unnecessary attorney fees and litigation costs.” Appellant’s App. at 21 (finding of fact 48). The trial court could properly consider this factor in determining that an award of attorney’s fees was not warranted. Cf. Hanson v. Spolnik, 685 N.E.2d 71, 80 (Ind. Ct. App. 1997) (“[M]isconduct that directly results in additional litigation expenses may be properly taken into account in the trial court’s decision to award attorney’s fees.”), trans. denied.

Candice argues that her allegations were not unfounded and that her discovery requests were necessary to determine Terry’s interest in the farmhouse. However, Terry

its specific findings.

points out that on April 4, 2006, the Nehmelms' attorney sent Candice's attorney a letter indicating that Terry "is named as a beneficiary in revocable Trusts," and that he "is only a potential beneficiary inasmuch as the Nehmelms can, of course, elect at any time to change the Trusts. As far as the divorce action between the Lloyds, I don't believe a potential expectancy of this nature is marital property, but I leave that to you and [Terry's attorney] to resolve." Appellant's App. at 126-27. Even after receiving this information, Candice continued in discovery regarding Terry's interest in the trust, filing interrogatories and subpoenaing the Nehmelms. Further, the trial court found that Candice supported her claim regarding the farmhouse with a case that had been overruled and an ALR annotation and Colorado caselaw that were "clearly contrary to established case law in the State of Indiana." Appellant's App. at 27 (conclusions 30 and 31) (citing In re Marriage of Dall, 681 N.E.2d 718, 722 (Ind. Ct. App. 1997) ("[A]n interest must be vested to warrant inclusion in the marital estate and division between the parties.")).

We grant trial courts broad discretion in determining whether to award attorney's fees. Although the facts of this case may have allowed the trial court to require Terry to pay some or all of Candice's attorney's fees, the trial court's decision to require each party to pay his or her own fees was not an abuse of discretion.

Conclusion

We conclude the trial court's finding regarding the value of Terry's pension is unsupported by the evidence and remand for a new finding regarding the pension's value. In all other respects, including the trial court's denial of Candice's request for attorney's fees, we affirm the trial court.

Affirmed in part, reversed in part, and remanded.

FRIEDLANDER, J., and MATHIAS, J., concur.